

**DECISION**

11,127 TRANS  
**THE COMPTROLLER GENERAL  
OF THE UNITED STATES  
WASHINGTON, D.C. 20548**

FILE: B-195303

DATE: August 13, 1979

MATTER OF: Texas Turbo Jet, Inc.

*[Request for Bid Withdrawal Due To Clerical Error]*  
DIGEST:

Where bidder seeks to withdraw its bid based upon alleged error and furnishes evidence to make prima facie case in support of error, i.e. substantially establishes error, for Government to make award it must virtually show that no error was made or that claim of error was not in good faith.

Invitation for bids (IFB) No. 27-9095, issued by the Defense Logistics Agency (DLA), offered for sale various Government surplus materiel. Texas Turbo Jet, Inc. (Texas Turbo) submitted a bid for a number of lots, including those designated Items 101 through 107. After bid opening, but before award, Texas Turbo claimed mistake due to clerical error in its bid on Items 101 through 107. DLA has requested our decision as to whether Texas Turbo should be permitted to withdraw its bid on these items. We believe that Texas Turbo should be permitted to do so.

Items 101 through 107 consist of various numbers (ranging from 10 to 33) of identical unused air filter screens intended for use in a Bell helicopter. Texas Turbo's bid for each such item indicated a unit price of \$51.51, and a total price equal to this unit price correctly extended by the number of screens offered. On February 26, 1979, five days after bid opening, but before award, Texas Turbo called DLA to advise that it had made a clerical error, and had intended to bid \$51.51 as the total price for each item, rather than as a unit price.

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In support of its contention, Texas Turbo submitted a copy of its worksheets to DLA consisting of pages from the DLA IFB on which appear Texas Turbo's annotations and calculations for Items 101 through 107. To the left of each of the descriptions the word "all" is written. The figure "51.51" appears in the box listing and describing each such item, as does an extended figure (in a different handwriting) equal to 51.51 times the number of screens offered under each item.

Texas Turbo asserts that the word "all" and the "51.51" figures were entered by a company officer who intended to thus indicate \$51.51 as the total price for each item. In calculating the bid price and preparing the bid, a company clerk allegedly erroneously extended the 51.51 figure by the number of screens in each item. The company officer who signed the bid states that he did not check the figures before mailing.

DLA, in its administrative report, concludes that Texas Turbo failed to establish by "clear and convincing evidence," that an error had been made. The "clear and convincing evidence" standard is that set forth in the Defense Disposal Manual, DOD 4160.21-M, Chapt. XII, § P(3)(a) (June 1973) as necessary to satisfactorily establish the existence of an error. *ch.*

# DLA contends that the only evidence favorable to Texas Turbo's allegation of mistake is the worksheet notation "all," as interpreted by Texas Turbo. Countervailing evidence it claims includes: the fact that the items were sold by the unit on the IFB, and that it is improbable that Texas Turbo intended to bid the same \$51.51 price for items consisting of widely varying numbers of units of the identical screens.

The Regulation cited by DLA uses the same "clear and convincing" standard for establishing a mistake as a prerequisite to both bid withdrawal and bid correction. However our Office has recognized that the degree of proof required for withdrawal is in no way comparable to that necessary to allow correction. 36 Comp. Gen. 441, 444 (1956). With respect to mistakes in bid alleged after bid opening but prior to award it has been held that where a bidder discovers that it has

made a mistake in its bid and so advises the contracting officer, the bidder is not bound by its bid, Ruggiero v. United States, 420 F.2d 709 (Ct. Cl. 1970), and therefore, acceptance of the bid does not create a binding contract. 49 Comp. Gen. 446 (1970); B-165127, October 3, 1968. See also 36 Comp. Gen. 441, supra. In United States v. Lipman, 122 F. Supp. 284, ~~287~~ (E.D. Pa. 1954), the court recognized that the so-called "firm-bid rule," designed to protect the integrity of the competitive bidding system, is inapplicable if the bidder "\* \* \* can prove that the desire to withdraw is due solely to an honest mistake and that no fraud is involved." Where the bidder seeking withdrawal alleges such an error and furnishes evidence to make a prima facie case in support of the error, we have stated that for the Government to make an award to that bidder the Government must virtually undertake the burden of showing that there was no error or that the bidder's claim of error was not made in good faith. B-160536, February 13, 1967; B-158730, May 4, 1966; 36 Comp. Gen. 441 supra, 444. Therefore, upon the ultimate determination that a bona fide error was committed, withdrawal is permissible. B-157348, supra. See also, 52 Comp. Gen. 258, 261 (1972). Conversely, where it can be concluded that no bona fide error has been committed, withdrawal is not allowable.

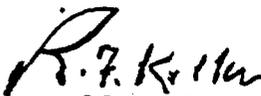
Pursuant to the terms of the IFB, the Government was free to "accept any one item or group of items in the bid, as may be in the best interest of the Government." Thus if the bidder's claim of error is to be accepted, it was willing to pay as low as \$1.56 per unit or as high as \$5.15 per unit for identical material, depending on which line items it would by chance be awarded. On its face, this result would appear implausible; however, an examination of the IFB tends to negate that conclusion since the financial risk which would result from this method of bidding was in fact insignificant. For example, only one line item contained 10 units, so that if Texas Turbo were high bidder for this item alone, its maximum exposure would be \$51.50. Of the balance of the line items, two contained 33 units, two contained 32 units, one contained 31 units and one 26 units. Therefore, exclusive of the line item containing only 10 units, the unit price variation between

line items would be insignificant if the bidder's explanation is accepted as correct. Thus we believe the bidder's statement explaining the clerical error resulting in the bid mistake, in conjunction with the worksheets, is sufficient to establish a prima facie case in support of the error. Cf. A. Tomae and Sons, Inc., B-188053, May 6, 1977, 77-1 CPD 318. The record contains no evidence that the bidder's claim was made in bad faith.

We also note that a unit price of \$51.51 is substantially higher than the Government estimate (which was \$20 per unit), and the only other bids submitted on these items, were \$4.26 per unit for Item 106 (consisting of 32 units), and \$12.00 per unit for Item 107 (consisting of 10 units). We need not consider whether, in the instant context, this disparity was sufficient to constitute constructive notice of the possibility of error, since actual notice of error was conveyed by Texas Turbo. However, the disparity is a further indicia of the likelihood of mistake.

Accordingly, Texas Turbo may be permitted to withdraw its bid.

Deputy

  
Comptroller General  
of the United States